

1936

RAJFALL
KUNWAR
v.
SARJU
RAI

widow is not binding on the reversioners,—*Mahadei v. Baldeo* (1)—the plaintiff is entitled to question the agreement.

I would therefore answer the second question in the affirmative.

BENNET, J.:—I agree.

BAJPAI, J.:—I agree.

MISCELLANEOUS CIVIL.

Before Mr. Justice Ganga Nath and Mr. Justice Smith

1936
April, 17

DAU DAYAL (PLAINTIFF) *v.* RAM PRASAD (DEFENDANT)*

Agra Tenancy Act (Local Act III of 1926), section 230—Theka of agricultural lands and some shops for an entire sum of annual rent—Suit for arrears of rent—Jurisdiction—Civil and revenue courts.

A suit for arrears of rent due on a joint theka of agricultural lands as well as some shops, the rent being fixed as one entire sum without any apportionment, is cognizable by the civil court. Such a suit is not one of the suits specified in the fourth schedule to the Agra Tenancy Act, and the revenue court can not entertain it and can not give adequate relief to the parties. The suit, therefore, is not excepted from the cognizance of the civil court by the provisions of section 230 of the Agra Tenancy Act. Further, as the rent was not apportioned, it was impossible for the plaintiff to split up his cause of action so as to file a suit in respect of the agricultural lands in the revenue court and another suit in respect of the shops in the civil court.

The parties were not represented.

GANGA NATH and SMITH, JJ.:—This is a reference by an Honorary Assistant Collector of Benares, through the Collector, under section 267, clause (2), of the Agra Tenancy Act (Act III of 1926) under the following circumstances.

A suit was brought for arrears of rent due under a *theka* given by the plaintiff to the defendant in respect

*Miscellaneous Case No. 635 of 1935.

(1) (1907) I.L.R., 30 AH., 75.

1936

DAU DAYAL
v.
RAM
PRASAD

of some agricultural lands and shops. There was a joint lease for both the agricultural land and the shops, in which one rent was fixed for both the properties. The suit was filed by the plaintiff for the arrears of rent in the civil court, which returned the plaint for presentation to the revenue court, finding that the suit was not cognizable by it. The plaint was filed in the revenue court. The same objection of jurisdiction was taken by the defendant in the revenue court as was taken by him in the civil court. The defendant contended that the suit was not cognizable by the revenue court. Without going into this question of jurisdiction the revenue court gave a decree to the plaintiff. On appeal the case was remanded by the learned District Judge to the revenue court for retrial of the issue about jurisdiction which had not been disposed of by the revenue court. On the suit being remanded to the revenue court, the learned Assistant Collector has made this reference. He is of the opinion that the suit is not cognizable by him.

The question for consideration is, which is the proper court to entertain and decide this suit? As already stated, the lease is a joint lease for agricultural land and for shops, reserving one sum of rent. If separate rents had been fixed for the agricultural land and for the shops, there would have been no difficulty, as a suit for arrears of rent for the shops could have been filed in the civil court, and a suit for arrears of rent for the agricultural land in the revenue court. The difficulty arises from the fact that only one rent has been fixed for both the properties. All suits of a civil nature are triable by the civil court. Under section 230, all suits and applications which are specified in the fourth schedule of the Tenancy Act have been excepted from the jurisdiction of the civil court. This suit does not fall under the fourth schedule of the Act, and consequently it is not cognizable by the revenue court. This being so, the only other court which is left to entertain the suit is the civil court.

1936

DAU DAYAL
v.
RAM
PRASAD

A similar point was considered in the case of *Sukhdeo v. Basdeo* (1). There a suit was brought by the plaintiffs who alleged that they were members of a joint Hindu family with the defendants, and they claimed as such a declaration of their right to the zamindari properties and the tenancy holdings owned by the family. The civil court entertained the suit and gave a decree to the plaintiffs declaring their rights in the zamindari property as well as in the tenancy holdings. On appeal, an objection was taken that the civil court had no jurisdiction to grant a decree for the declaration of the plaintiffs' rights in the fixed-rate and occupancy holdings. In support of the contention reliance was placed on sections 121 and 230 of the Agra Tenancy Act. Under sections 121 and 230, the plaintiffs' suit for declaration of their rights in the tenancy holdings was not cognizable by the civil court. It was observed there at page 953:

"It cannot be disputed that civil courts have exclusive jurisdiction to try all suits of a civil nature unless their cognizance is either expressly or impliedly barred; vide section 9 of the Civil Procedure Code. It is also clear that a suit is of a civil nature if the principal question in the suit relates to a civil right." . . . "The scheme and the provisions of the Agra Tenancy Act clearly indicate that the legislature intended to vest revenue courts alone with jurisdiction to decide all disputes concerning tenancy holdings, but there is nothing in the Act to imply that if some of the reliefs prayed for in a suit can only be granted by the civil court, the jurisdiction of the civil court is ousted by the mere fact that the relief for a declaration of right to a certain holding is coupled with the other reliefs. Nor is there anything in the Act to show that if the cause of action entitles the plaintiff, over and above a declaration of his right to a holding, to certain other reliefs, for instance, declaration of his right to zamindari property, the plaintiff must split his cause of action in two parts and sue for a declaration of his right to the holding in the revenue court, and claim redress with respect to the zamindari property from the civil court. To hold otherwise would be to ignore the words, 'based on a cause of action in respect of which adequate relief could be

obtained by means of any such suit or application', used in section 230 of the Act."

As already stated, the revenue court cannot entertain the suit, and cannot give adequate relief to the parties. Nor does the present suit fall under the fourth schedule. Consequently it is the civil court only which can entertain the suit and give adequate relief.

It may also be mentioned that it is not possible for the plaintiff to split up his cause of action so as to file a suit in respect of one part of his cause of action in one court, and in respect of the other in the other court.

In these circumstances we hold that the suit is triable by the civil court. The plaint will therefore be returned by the learned Assistant Collector to the plaintiff for presentation to the civil court.

APPELLATE CIVIL

Before Mr. Justice Thom and Mr. Justice Rachhpal Singh

RADHA NATH MUKERJI AND OTHERS (PLAINIFFS) *v.*
SHAKTIPADO MUKERJI AND OTHERS (DEFENDANTS)*

1936
April, 20

Hindu law—Marriage—Gotra—Change of woman's gotra on marriage—Widow does not revert to her father's gotra—Remarriage of widow with a person of her father's gotra—Validity.

Upon her marriage a Hindu woman passes out of her father's *gotra* into her husband's *gotra*. When she becomes a widow she retains this latter *gotra* and does not revert to her father's *gotra*. The widow can, therefore, validly marry a second husband who may be of her father's *gotra*.

Messrs. P. L. Banerji and H. P. Sen, for the appellants.

Messrs. Gadadhar Prasad and Satnarain Prasad, for the respondents.

THOM and RACHHPAL SINGH, JJ. :—This is a plaintiffs' appeal arising out of a suit for possession over certain properties including movables, and for a declaration that the plaintiffs have a right to administer a trust as the

*First Appeal No. 423 of 1932, from a decree of Mathura Prasad, Additional Subordinate Judge of Benares, dated the 16th of June, 1932.